



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-HQ-OAR-2012-0943, FRL-9769-4]

RIN 2060

Findings of Failure to Submit a Complete State Implementation Plan for Section 110(a) Pertaining to the 2008 Ozone National Ambient Air Quality Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is finding that 28 states, the District of Columbia and the Commonwealth of Puerto Rico have not made complete state implementation plan (SIP) submissions to address certain SIP elements, as required by the Clean Air Act (CAA). Specifically, the EPA is determining that these states have not submitted complete SIPs that provide the basic CAA program elements as necessary to implement the 2008 8-hour ozone national ambient air quality standards (NAAQS). The EPA refers to these SIP submissions as “infrastructure” SIPs. By this action, the EPA is identifying states that either have not made any submission to address the applicable elements or have made a complete submission to address some applicable elements but did not make a complete submission for other applicable elements. The EPA recognizes that its efforts to reconsider the 2008 8-hour ozone NAAQS delayed and complicated the efforts of some states to develop and submit these infrastructure SIPs, but at this time the EPA is nevertheless required by court order to make these findings. These findings of failure to submit establish a 24-month deadline for the EPA to promulgate federal implementation

plans (FIPs) to address the outstanding SIP elements unless, prior to that time, the affected states submit and the EPA approves, a SIP that corrects the deficiency.

DATES: The effective date of this rule is **[INSERT DATE 30 DAYS AFTER PUBLICATION IN THE *FEDERAL REGISTER*]**.

FOR FURTHER INFORMATION CONTACT: General questions concerning this notice should be addressed to Dr. Karl Pepple: telephone (919) 541-2683, email pepple.karl@epa.gov; or Mr. Lynn Dail: telephone (919) 541-2363, email dail.lynn@epa.gov, Office of Air Quality Planning and Standards, Air Quality Policy Division, Mail Code C539-02, 109 TW Alexander Drive, Research Triangle Park, NC 27709.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Notice and Comment Under the Administrative Procedure Act (APA)

Section 553 of the APA, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. The EPA has determined that there is good cause for making this rule final without prior proposal and opportunity for comment because no significant EPA judgment is involved in making a finding of failure to submit SIPs, or elements of SIPs, required by the CAA, where states have made no submissions, or incomplete submissions, to meet the requirement. Thus, notice and public procedure are unnecessary. The EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(B).

B. How can I get copies of this document and other related information?

The EPA has established a docket for this action under Docket ID No. EPA-HQ-OAR-2012-0943. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Avenue, NW, Washington, D.C. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744 and the telephone number for the Office of Air and Radiation Docket and Information Center is (202) 566-1742.

C. Contact Information

For questions related to a specific state, the District of Columbia or the Commonwealth of Puerto Rico, please contact the appropriate EPA Regional Office:

Regional Offices	States
EPA Region I: Dave Conroy, Air Program Branch Manager, Air Programs Branch, EPA New England, 1 Congress Street, Suite 1100, Boston, MA 02203-2211.	Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont.
EPA Region II: Raymond Werner, Chief, Air Programs Branch, EPA Region II, 290 Broadway, 21st Floor, New York, NY 10007-1866.	New Jersey, New York and Puerto Rico.
EPA Region III: Donna Mastro, Air Program Manager, Air Quality Planning Branch, EPA Region III, 1650 Arch Street, Philadelphia, PA 19103-2187.	Delaware, District of Columbia, Maryland, Pennsylvania, Virginia and West Virginia.
EPA Region IV: R. Scott Davis, Air Program Manager, Regulatory Development Section, EPA Region IV, Sam Nunn, Atlanta Federal Center, 61 Forsyth Street, SW., 12th Floor, Atlanta, GA 30303.	Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina and Tennessee.
EPA Region V: John Mooney, Air Program Branch Manager, Air Programs Branch, EPA Region V, 77 West Jackson Street, Chicago, IL 60604.	Illinois, Indiana, Michigan, Minnesota, Ohio and Wisconsin.
EPA Region VI: Guy Donaldson, Chief,	Arkansas, Louisiana, New Mexico,

Air Planning Section, EPA Region VI, 1445 Ross Avenue, Dallas, TX 75202-2733.	Oklahoma and Texas.
EPA Region VII: Joshua A. Tapp, Branch Chief, Air Planning and Development Branch, EPA Region VII, 11201 Renner Blvd., Lenexa, KS 66219.	Iowa, Kansas, Missouri and Nebraska.
EPA Region VIII: Monica Morales, Air Program Manager, Air Quality Planning Unit, EPA Region VIII Air Program, 1595 Wynkoop St. (8P-AR), Denver, CO 80202-1129.	Colorado, Montana, North Dakota, South Dakota, Utah and Wyoming.
EPA Region IX: Doris Lo, Acting Air Program Manager, Air Planning Office, EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105.	Arizona, California, Hawaii and Nevada.
EPA Region X: Debra Suzuki, Air Program Manager, Air Planning Unit, EPA Region X, Office of Air, Waste, and Toxics, Mail Code AWT-107, 1200 Sixth Avenue, Seattle, WA 98101.	Alaska, Idaho, Oregon and Washington.

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II. Background and Overview

On March 12, 2008, the EPA promulgated new NAAQS for ozone.¹ The agency revised the previous 8-hour primary ozone standard of 0.08 parts per million (ppm) to 0.075 ppm. The EPA also revised the secondary 8-hour standard to the level of 0.075 ppm making it identical to the revised primary standard. In September 2009, the EPA announced it would reconsider the 2008 8-hour ozone NAAQS and informed the states of this plan. On January 19, 2010, the EPA extended by 1 year the deadline for promulgating initial area designations for the 2008 ozone NAAQS. However, in September 2011, the EPA announced its decision to merge the reconsideration of the 2008 NAAQS with the next scheduled 5-year review of the ozone NAAQS, and advised the states that the 2008 NAAQS would be implemented.

The CAA section 110(a) imposes an obligation upon states to make a SIP submission with respect to the 2008 8-hour ozone NAAQS. CAA section 110(a)(1) requires states to submit SIPs that provide for the implementation, maintenance and enforcement of a new or revised NAAQS within 3 years following the promulgation of the new or revised NAAQS, or within such shorter period as the EPA may prescribe.² Section 110(a)(2) lists specific requirements that states must meet in these SIP

¹ See 73 FR 16436, March 27, 2008, National Ambient Air Quality Standards for Ozone, Final Rule.

² The EPA has not prescribed a shorter period for the 2008 8-hour ozone NAAQS.

submissions, as applicable. The EPA refers to this type of SIP submission as the “infrastructure” SIP. The requirements for infrastructure SIPs include basic SIP elements such as requirements for monitoring, basic program requirements and legal authority that are designed to assure attainment and maintenance of the NAAQS. The contents of that submission may vary depending upon the facts and circumstances. In particular, the data and analytical tools available at the time the state develops and submits the SIP for a new or revised NAAQS necessarily affect the content of the submission. The content of such a SIP submission may also vary depending upon what provisions the state's existing SIP already contains. Two elements identified in section 110(a)(2) are not governed by the 3-year submission deadline of section 110(a)(1) because SIPs incorporating necessary local nonattainment area requirements are not due within 3 years after promulgation of a new or revised NAAQS, but rather are due at the time the nonattainment area plan requirements are due pursuant to section 182.³ These requirements are: (i) submissions required by section 110(a)(2)(C) to the extent that subsection refers to a nonattainment

³ Nonattainment area plans required by part D title I of the CAA for the 2008 8-hour ozone NAAQS are due by various dates as established throughout subpart 2 of part D, i.e., reasonably available control measures are due in 2 years under 182(b)(2), reasonable further progress plans are due in 3 years under 182(b)(1), and attainment demonstrations are due in 4 years under 182(c)(2). The EPA has interpreted these dates to run from the effective dates of the nonattainment designations, *see* 68 FR 32802, 32816-817 (June 2, 2003) (“subpart 2 SIP submittals will be due as a general matter by the same period of time after designation and classification under the 8-hour standard as provided in subpart 2 for areas designated and classified at the time of enactment of the 1990 CAA.”) The designations for the 2008 ozone standard were effective on July 20, 2012. *See* 77 FR 30088 (May 21, 2012) and 77 FR 34221 (June 11, 2012). The EPA notes that it has recently become aware that in several actions on ozone infrastructure SIPs the EPA incorrectly indicated that nonattainment SIPs would be due according to schedules established under section 172. Those statements were incorrect and the result of inadvertently using language applicable to particulate matter SIPs in ozone SIP actions. Section 172 sets SIP submittal dates only for SIPs subject to subpart 1 of part D. Section 182 sets the dates for ozone SIPs which are governed by subpart 2 of part D.

area new source review permit program for major sources as required in part D of title I of the CAA; and (ii) submissions required by section 110(a)(2)(I) which pertains to the nonattainment planning requirements of part D of title I of the CAA. Therefore, this action does not cover these specific SIP elements in section 110(a)(2). This action does cover the requirement that infrastructure SIPs provide for a minor source permitting program.

In the case of the 2008 8-hour ozone NAAQS, the period during which the EPA was making efforts to reconsider the 2008 NAAQS with the expectation of revising it in the near term extended about 6 months beyond March 12, 2011, the normal deadline for submission of infrastructure SIPs. The EPA therefore did not prepare and issue timely guidance for the states to assist them in preparing their submissions. Also, states were given the impression that if the NAAQS were revised as a result of the reconsideration, the 3-year deadline would reset. However, given that the NAAQS have not been revised, March 12, 2011, remains the legally applicable deadline for infrastructure SIPs for the 2008 8-hour ozone NAAQS.

The EPA recognizes that many states would have developed and made timely infrastructure SIP submissions for purposes of the 2008 8-hour ozone NAAQS but for the uncertainty of the submission date requirement as a result of the EPA's efforts to reconsider that NAAQS, the EPA's associated interim advice to states regarding implementation of those NAAQS, and the lack of guidance from the EPA regarding what such infrastructure submissions should include. The EPA believes that many states in fact have SIPs in place that meet all or many of the basic program elements required in section 110(a)(2), as a result of their earlier SIP submissions in connection with previous

ozone NAAQS and NAAQS for other pollutants. Since the September 2011 announcement that the 2008 8-hour NAAQS would be implemented, many states have been working to prepare infrastructure SIP submissions documenting that this is the case (and supplementing the SIP with new provisions when needed) and to complete required public comment opportunity steps. About one-half of the states have successfully made complete submissions and a number of others are less than a month away from doing so. Some states are on track to make a submittal somewhat later.

As of early 2012, which was only a few months after the announcement that the deadline for infrastructure SIPs would not reset and thus had already passed on March 12, 2011, many states had not yet submitted an infrastructure SIP for the 2008 8-hour ozone NAAQS. Litigants filed a mandatory duty lawsuit alleging: (i) that the EPA had failed to take timely mandatory action under section 110(k) on infrastructure SIPs submitted by Kentucky and Tennessee; and (ii) that the EPA had failed to make completeness findings or findings of failure to submit for many other states that had not yet submitted such infrastructure SIP submissions as of that point in time. On October 17, 2012, the court granted summary judgment to the litigants against the EPA and ordered the EPA to take certain actions, including making findings of failure to submit for any of the listed states that had not yet made an infrastructure SIP submission.⁴ The court ordered the EPA to sign a final rule issuing these findings of failure to submit for each of the states listed in the order for each of the listed infrastructure SIP elements, no later than January 4, 2013. The EPA interprets the court's order to require a determination whether or not each of the listed states has made a complete infrastructure SIP submission for the listed elements of

⁴ *WildEarth Guardians v. Lisa P. Jackson*, U.S. District Court for the Northern District of California, Case No.:11-CV-5651 YGR and Consolidated Case No.: 11-CV-05694 YGR.

section 110(a)(2), as applicable, and if the state in question has not made such a complete submission for one or more relevant elements of section 110(a)(2), to make a finding of failure to submit with respect to any such element. Whether or not a submittal is “complete” pertains to the requirements in section 110(k)(1)(B) and EPA’s regulations at 40 CFR 51 Appendix V. Thus, the EPA is making findings of failure to submit, in whole or in part, based upon whether the states at issue have made a complete infrastructure SIP for the relevant elements of section 110(a)(2).⁵

The EPA also is not issuing in this notice any findings of failure to submit SIPs addressing section 110(a)(2)(D)(i)(I) of the CAA. The EPA has historically interpreted section 110(a)(1) of the CAA as establishing the required submittal date for SIPs addressing all of the “interstate transport” requirements in section 110(a)(2)(D) including the provisions in section 110(a)(2)(D)(i)(I) regarding significant contribution to nonattainment and interference with maintenance. The D.C. Circuit's recent opinion in *EME Homer City Generation v. EPA*, 696 F.3d 7, 31 (D.C. Cir. 2012), however, concluded that a SIP cannot be deemed to lack a required submission or deemed deficient for failure to meet the 110(a)(2)(D)(i)(I) obligation until after the EPA quantifies that obligation. This decision is not yet final as the mandate has not been issued and the EPA has petitioned for rehearing *en banc*, asking the full court to reconsider that conclusion. Nonetheless, during the pendency of the appeal, the EPA intends to act in accordance with the holdings in the *EME Homer City* opinion. Therefore, at this time the EPA is not

⁵ The court also ordered the EPA to sign a final rule or rules taking action on infrastructure SIP submittals from Tennessee and Kentucky. The date for these final actions was subsequently extended by the court to March 4, 2013. These actions will be addressed in separate *Federal Register* notices.

making findings that states failed to submit SIPs to comply with section 110(a)(2)(D)(i)(I).

After excluding SIP elements required by CAA sections 110(a)(2)(C) to the extent that subsection refers to a nonattainment area new source review permit program for major sources as required in part D of title I of the CAA, 110(a)(2)(I) regarding plans for nonattainment areas, and 110(a)(2)(D)(i)(I) regarding interstate transport affecting attainment and maintenance of the NAAQS, as explained above, the remaining elements that are relevant to this action are the requirements of CAA sections 110(a)(2)(A), (B), (C) to the extent it refers to enforcement, to permitting programs for minor sources and to permitting programs required by part C of title I of the CAA, (D)(i)(II), (D)(ii), (E)-(H) and (J)-(M).

For those states that have not yet made an infrastructure SIP submittal and those states that have made a submittal that was not complete with respect to each relevant element of section 110(a)(2), as applicable, the EPA is making a finding of failure to submit. For those states that have not made any submittal, the EPA is making a finding with respect to all of the relevant section 110(a)(2) SIP elements. For those states that have made a SIP submittal, but whose submittal is incomplete for some or all of the relevant section 110(a)(2) elements, as applicable, the EPA is issuing findings of failure to submit only with respect to those specific elements which a state has not yet submitted a complete SIP submission to meet. For both sets of states, these findings reflect submissions received or not received as of January 3, 2013.

These findings establish a 24-month deadline for the promulgation by the EPA of a FIP, in accordance with section 110(c)(1). These findings of failure to submit do not

impose sanctions, or set deadlines for imposing sanctions as described in section 179 of the CAA, because these findings do not pertain to the elements of a part D, title I plan for nonattainment areas as required under section 110(a)(2)(I) and because this action is not a SIP call pursuant to section 110(k)(5).

The EPA is not making any finding in this notice regarding 22 states that have submitted infrastructure SIPs that have become complete by operation of law under CAA section 110(k)(1)(B) or have already been determined by the EPA to be complete for all elements relevant to this action. These states are Alaska, Alabama, Colorado, Connecticut, Florida, Georgia, Idaho, Indiana, Kentucky, Maryland, Mississippi, New Hampshire, North Carolina, Ohio, Oregon, Rhode Island, South Carolina, Tennessee, Texas, Virginia and West Virginia. Arizona and Illinois have made submissions that have been determined by the EPA to be complete except for elements related to prevention of significant deterioration (PSD). Also, the infrastructure SIP submitted by Delaware was determined by the EPA to be incomplete for all elements prior to this notice; the EPA is anticipating that Delaware will submit a revised SIP soon. Also, New Mexico has submitted an infrastructure SIP covering Bernalillo County that has already been approved by the EPA. The submission date and completeness status of the infrastructure SIP for each of these states are provided in Table 1, for informational purposes only.

Table 1 – Infrastructure SIPs (and SIP Elements) for the 2008 8-Hour Ozone NAAQS That Have Become Complete by Operation of Law, Determined to be Complete or Determined to be Incomplete or Approved Prior to Today's Action

State	Date of Receipt by the EPA (and Date Shown on the Submittal)	Completeness Status
Alaska	Section 110(a)(2)(D)(i) – April 4, 2011 (submission was dated March 29, 2011); other sections – March 8,	Complete by operation of law

	2012 (submission is dated March 2, 2012)	
Alabama	August 23, 2012 (submission is dated August 20, 2012)	Determined to be complete on December 14, 2012
Arizona	December 27, 2012 (submission is dated December 27, 2012)	Determined to be complete for relevant elements except those related to PSD on January 4, 2013
Colorado	December 31, 2012 (submission is dated December 31, 2012)	Determined to be complete on January 2, 2013
Connecticut	December 28, 2012 (submission is dated December 28, 2012)	Determined to be complete on January 3, 2013
Delaware	February 1, 2012 (submission is dated January 17, 2012)	Determined to be incomplete on March 29, 2012
Florida	November 3, 2011 (submission is dated October 31, 2011)	Complete by operation of law
Georgia	March 8, 2012 (submission is dated March 6, 2012)	Complete by operation of law
Idaho	June 28, 2010 (submission is dated June 25, 2010)	Complete by operation of law
Illinois	December 31, 2012 (submission is dated December 31, 2012)	Determined to be complete for relevant elements except those related to PSD on January 2, 2013
Indiana	December 15, 2011 (submission is dated December 12, 2011)	Complete by operation of law
Kentucky	July 23, 2012 (submission is dated July 17, 2012)	Determined to be complete on December 14, 2012
Maryland	December 31, 2012 (submission is dated December 27, 2012)	Determined to be complete on January 2, 2013
Mississippi	August 17, 2012 (submission is dated July 26, 2012)	Determined to be complete on December 18, 2012
New Hampshire	December 31, 2012 (submission is dated December 31, 2012)	Determined to be complete on January 3, 2013
New Mexico (for Bernalillo County only)	August 25, 2010 (submission is dated August 16, 2010)	Final approval (77 FR 58032, September 19, 2012)

North Carolina	November 9, 2012 (submission is dated November 2, 2012)	Determined to be complete on November 15, 2012
Ohio	December 27, 2012 (submission is dated December 27, 2012)	Determined to be complete on January 2, 2013
Oregon	Section 110(a)(2)(D)(i) – June 28, 2010 (submission is dated June 23, 2010); other sections – December 28, 2011 (submission is dated December 19, 2011)	Complete by operation of law
Rhode Island	January 2, 2013 (submission is dated January 2, 2013)	Determined to be complete on January 3, 2013
South Carolina	October 28, 2011 (submission is dated October 24, 2011)	Complete by operation of law
Tennessee	October 21, 2009 (submission is dated October 19, 2009)	Complete by operation of law
Texas	December 19, 2012 (submission is dated December 13, 2012)	Determined to be complete on December 20, 2012
Virginia	July 26, 2012 (submission is dated July 23, 2012)	Determined to be complete on December 10, 2012
West Virginia	February 21, 2012 (submission is dated February 17, 2012)	Complete by operation of law

The EPA is finding that the 25 states not listed in Table 1, Arizona, Illinois, New Mexico, the District of Columbia and the Commonwealth of Puerto Rico, as identified in section III of this notice, have not made a complete infrastructure submission to meet certain requirements of section 110(a)(2) that are relevant to this action, as applicable, for the 2008 8-hour ozone NAAQS. The EPA is committed to working with these states and areas to expedite the needed submissions and to working with all the states to review and act on their infrastructure SIP submissions in accordance with the requirements of the CAA.

III. Findings of Failure to Submit for States That Failed to Make an Infrastructure SIP Submittal in Whole or in Part for the 2008 8-hour Ozone NAAQS

The EPA is making findings that certain states have failed to submit a complete infrastructure SIP that provides certain basic program elements of section 110(a)(2) necessary to implement the 2008 8-hour ozone NAAQS, by January 3, 2013, as identified for each below. The EPA is by this action starting a 24-month deadline by which time the EPA must promulgate a FIP for each affected state to address the identified section 110(a)(2) requirements, unless the state submits and EPA approves a SIP revision that corrects the deficiency before the EPA promulgates a FIP for the state, in accordance with section 110(c)(1). This action will be effective 30 days after publication, on **[INSERT DATE 30 DAYS AFTER PUBLICATION IN THE *FEDERAL REGISTER*]**.

The following states and territories failed to make a complete submittal to satisfy certain of the requirements of section 110(a)(2).

Region I

Maine did not submit a SIP to address the requirements of section 110(a)(2)(A), (B), (C) to the extent it refers to enforcement, to permitting programs for minor sources and to PSD permitting programs required by part C of title I of the CAA, (D)(i)(II), (D)(ii), (E)-(H) and (J)-(M).

Massachusetts did not submit a SIP to address the requirements of section 110(a)(2)(A), (B), (C) to the extent it refers to enforcement, to permitting programs for minor sources and to PSD permitting programs required by part C of title I of the CAA, (D)(i)(II), (D)(ii), (E)-(H) and (J)-(M). Regarding this finding, sections 110(a)(2)(C),

(D)(i)(II), (D)(ii) and (J) (in all four subsections for the PSD-related and notification-related requirements only) are already addressed for Massachusetts through an existing PSD FIP that remains in place. Therefore, this action will not trigger any additional FIP obligations with respect to the PSD-related and notification-related requirements in these four subsections.

Vermont did not submit a SIP to address the requirements of 110(a)(2)(A), (B), (C) to the extent it refers to enforcement, to permitting programs for minor sources and to PSD permitting programs required by part C of title I of the CAA, (D)(i)(II), (D)(ii), (E)-(H) and (J)-(M).

Region II

New Jersey did not submit a SIP to address the requirements of section 110(a)(2)(A), (B), (C) to the extent it refers to enforcement, to permitting programs for minor sources and to PSD permitting programs required by part C of title I of the CAA, (D)(i)(II), (D)(ii), (E)-(H) and (J)-(M). Regarding this finding, sections 110(a)(2)(C), (D)(i)(II), (D)(ii) and (J) (in all four subsections for the PSD-related and notification-related requirements only) are already addressed for New Jersey through an existing PSD FIP that remains in place. Therefore, this action will not trigger any additional FIP obligations with respect to the PSD-related and notification-related requirements in these four subsections. The EPA anticipates that New Jersey will propose a SIP for public comment that certifies New Jersey's existing EPA-approved SIP, meets all the requirements of the infrastructure SIP elements included in today's finding that are not related to PSD or to notification.

New York did not submit a SIP to address the requirements of section 110(a)(2)(A), (B), (C) to the extent it refers to enforcement, to permitting programs for minor sources and to PSD permitting programs required by part C of title I of the CAA, (D)(i)(II), (D)(ii), (E)-(H) and (J)-(M). A SIP proposed for public comment by New York certifies that New York's existing EPA-approved SIP, including its PSD program, meets all the requirements of the infrastructure SIP elements included in today's finding.

The *Commonwealth of Puerto Rico* did not submit a SIP to address the requirements of section 110(a)(2)(A), (B), (C) to the extent it refers to enforcement, to permitting programs for minor sources and to PSD permitting programs required by part C of title I of the CAA, (D)(i)(II), (D)(ii), (E)-(H) and (J)-(M). Regarding this finding, sections 110(a)(2)(C), (D)(i)(II), (D)(ii) and (J) (in all four subsections for the PSD-related and notification-related requirements only) are already addressed for the Commonwealth of Puerto Rico through an existing PSD FIP that remains in place. Therefore, this action will not trigger any additional FIP obligations with respect to the PSD-related and notification-related requirements in these four subsections.

Region III

The *District of Columbia* did not submit a SIP to address the requirements of section 110(a)(2)(A), (B), (C) to the extent it refers to enforcement, to permitting programs for minor sources and to PSD permitting programs required by part C of title I of the CAA, (D)(i)(II), (D)(ii), (E)-(H) and (J)-(M). Regarding this finding, sections 110(a)(2)(C), (D)(i)(II), (D)(ii) and (J) (in all four sections for the PSD-related and notification-related requirements only) are already addressed for the District of Columbia through an existing PSD FIP that remains in place. Therefore, this action will not trigger

any additional FIP obligations with respect to the PSD-related and notification-related requirements in these four subsections.

Pennsylvania did not submit a SIP to address the requirements of section 110(a)(2)(A), (B), (C) to the extent it refers to enforcement, to permitting programs for minor sources and to PSD permitting programs required by part C of title I of the CAA, (D)(i)(II), (D)(ii), (E)-(H) and (J)-(M). Regarding this finding, sections 110(a)(2)(C), (D)(i)(II), (D)(ii) and (J) (in all four subsections for the PSD-related and notification-related requirements only) are already addressed for Allegheny County through an existing PSD FIP that remains in place. Therefore, this action will not trigger any additional FIP obligations with respect to the PSD-related and notification-related requirements in these four subsections in Allegheny County.

Region V

Illinois did not submit a complete SIP to address the requirements of section 110(a)(2)(C) and (J) to the extent these refer to PSD permitting programs required by part C of title I of the CAA. Illinois also failed to submit a complete SIP to address the PSD-related requirement of section 110(a)(2)(D)(i)(II) to the extent it refers to interference with other states' PSD permitting programs required by part C by sources in Illinois. Illinois also failed to submit a complete SIP to address the requirement of section 110(a)(2)(D)(ii) to the extent it refers to notification to other states. Regarding this finding, sections 110(a)(2)(C), (D)(i)(II), (D)(ii) and (J) (in all four subsections for the PSD-related and notification-related requirements only) are already addressed for Illinois through an existing PSD FIP that remains in place. Therefore, this action will not trigger

any additional FIP obligations with respect to the PSD-related and notification-related requirements in these four subsections.

Michigan did not submit a SIP to address the requirements of section 110(a)(2)(A), (B), (C) to the extent it refers to enforcement, to permitting programs for minor sources and to PSD permitting programs required by part C of title I of the CAA, (D)(i)(II), (D)(ii), (E)-(H) and (J)-(M).

Minnesota did not submit a SIP to address the requirements of section 110(a)(2)(A), (B), (C) to the extent it refers to enforcement, to permitting programs for minor sources and to PSD permitting programs required by part C of title I of the CAA, (D)(i)(II), (D)(ii), (E)-(H) and (J)-(M). Regarding this finding, sections 110(a)(2)(C), (D)(i)(II), (D)(ii) and (J) (in all four subsections for the PSD-related and notification-related requirements only) are already addressed for Minnesota through an existing PSD FIP that remains in place. Therefore, this action will not trigger any additional FIP obligations with respect to the PSD-related and notification-related requirements in these four subsections.

Wisconsin did not submit a SIP to address the requirements of section 110(a)(2)(A), (B), (C) to the extent it refers to enforcement, to permitting programs for minor sources and to PSD permitting programs required by part C of title I of the CAA, (D)(i)(II), (D)(ii), (E)-(H) and (J)-(M).

Region VI

Arkansas did not submit a SIP to address the requirements of section 110(a)(2)(A), (B), (C) to the extent it refers to enforcement, to permitting programs for

minor sources and to PSD permitting programs required by part C of title I of the CAA, (D)(i)(II), (D)(ii), (E)-(H) and (J)-(M).

Louisiana did not submit a SIP to address the requirements of section 110(a)(2)(A), (B), (C) to the extent it refers to enforcement, to permitting programs for minor sources and to PSD permitting programs required by part C of title I of the CAA, (D)(i)(II), (D)(ii), (E)-(H) and (J)-(M).

New Mexico did not submit a SIP to address the requirements of section 110(a)(2)(A), (B), (C) to the extent it refers to enforcement, to permitting programs for minor sources and to PSD permitting programs required by part C of title I of the CAA, (D)(i)(II), (D)(ii), (E)-(H) and (J)-(M) for all portions of the state other than Bernalillo County.

Oklahoma did not submit a SIP to address the requirements of section 110(a)(2)(A), (B), (C) to the extent it refers to enforcement, to permitting programs for minor sources and to PSD permitting programs required by part C of title I of the CAA, (D)(i)(II), (D)(ii), (E)-(H) and (J)-(M).

Region VII

Iowa did not submit a complete SIP to address the requirements of section 110(a)(2)(A), (B), (C) to the extent it refers to enforcement, to permitting programs for minor sources and to PSD permitting programs required by part C of title I of the CAA, (D)(i)(II), (D)(ii), (E)-(H) and (J)-(M). On December 17, 2012, the state by letter submitted a document that describes the actions the state has taken to address the infrastructure SIP requirements for the 2008 8-hour ozone NAAQS, to demonstrate that the state is taking necessary and possible steps needed to ensure that its rules and

procedures are sufficient to implement the new standards. However, while the state provided this document to the public for comment on December 6, 2012, that comment period does not close until January 8, 2013. In addition, the state has scheduled a public hearing on this submission for January 8, 2013, as required by CAA section 110(a)(1) and 40 CFR 51.102. The EPA anticipates that Iowa will submit a complete SIP soon after conclusion of the public comment period.

Kansas did not submit a SIP to address the requirements of section 110(a)(2)(A), (B), (C) to the extent it refers to enforcement, to permitting programs for minor sources and to PSD permitting programs required by part C of title I of the CAA, (D)(i)(II), (D)(ii), (E)-(H) and (J)-(M). The EPA anticipates that Kansas will submit a SIP to address these requirements after conclusion of the public comment period currently underway.

Missouri did not submit a SIP to address the requirements of section 110(a)(2)(A), (B), (C) to the extent it refers to enforcement, to permitting programs for minor sources and to PSD permitting programs required by part C of title I of the CAA, (D)(i)(II), (D)(ii), (E)-(H) and (J)-(M). The EPA anticipates that Missouri will submit a SIP to address these requirements soon.

Nebraska did not submit a SIP to address the requirements of section 110(a)(2)(A), (B), (C) to the extent it refers to enforcement, to permitting programs for minor sources and to PSD permitting programs required by part C of title I of the CAA, (D)(i)(II), (D)(ii), (E)-(H) and (J)-(M). The EPA anticipates that Nebraska will submit a SIP to address these requirements after conclusion of the public comment period currently underway.

Region VIII

Montana did not submit a SIP to address the requirements of section 110(a)(2)(A), (B), (C) to the extent it refers to enforcement, to permitting programs for minor sources and to PSD permitting programs required by CAA part C title I, (D)(i)(II), (D)(ii), (E)-(H) and (J)-(M).

North Dakota did not submit a SIP to address the requirements of section 110(a)(2)(A), (B), (C) to the extent it refers to enforcement, to permitting programs for minor sources and to PSD permitting programs required by part C of title I of the CAA, (D)(i)(II), (D)(ii), (E)-(H) and (J)-(M). The state anticipates undergoing rulemaking and public notice early in 2013.

South Dakota did not submit a SIP to address the requirements of section 110(a)(2)(A), (B), (C) to the extent it refers to enforcement, to permitting programs for minor sources and to PSD permitting programs required by part C of title I of the CAA, (D)(i)(II), (D)(ii), (E)-(H) and (J)-(M). The state anticipates undergoing rulemaking and public notice early in 2013.

Utah did not submit a complete SIP to address the requirements of section 110(a)(2)(A), (B), (C) to the extent it refers to enforcement, to permitting programs for minor sources and to PSD permitting programs required by part C of title I of the CAA, (D)(i)(II), (D)(ii), (E)-(H) and (J)-(M). On December 12, 2012, the state by letter submitted documents that summarize the state's existing infrastructure SIP elements and explain that these elements satisfy the state's obligation for the 2008 ozone NAAQS. However, the state had not yet completed a public comment process on this submission, although the state has provided these documents to the public for a comment period

between December 18, 2012, and January 18, 2013. As a result, the December 12, 2012, submittal has not yet satisfied the requirement for public notice and opportunity for a public hearing established in CAA section 110(a)(1) and 40 CFR 51.102. *See also* CAA section 110(l). The state's letter offers its position that because all of the elements in the existing infrastructure SIP were previously subject to a public comment process, including the opportunity for public hearing(s), when they were first submitted for the EPA's approval and incorporation into the SIP, no public comment requirements should apply to the December 12, 2012, submittal. Utah's position is inconsistent with the plain text of section 110(a)(1) of the CAA. Section 110(a)(1) first provides that "[e]ach State shall, *after reasonable notice and public hearings*, adopt and submit to the Administrator, within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a [primary NAAQS] (or any revision thereof) ... a plan [i.e., infrastructure SIP] which provides for implementation, maintenance, and enforcement of such primary standard." The clause "after reasonable notice and public hearings" is most naturally read as imposing that procedure on the immediately following phrase, "adopt and submit," the direct object of which is the infrastructure SIP itself. Utah's position would instead apply the phrase "after reasonable notice and public hearings" to SIP revisions submitted before the promulgation of the new or revised primary NAAQS, despite the complete absence of a reference to those earlier SIP revisions in section 110(a)(1). Any possible residual ambiguity is removed by the last sentence of section 110(a)(1), which requires an infrastructure SIP for a secondary NAAQS to be considered (unless a separate public hearing is provided) "at the hearing required by the first sentence of this paragraph." The only possible interpretation of this sentence is that there

must be an opportunity for public hearing for the infrastructure SIPs for both the primary and secondary NAAQS. As explained in an EPA memorandum,⁶ the requirement in the CAA and EPA rules for public notice and opportunity for a hearing is to inform the public that the SIP is being revised and allow for comment as to whether the state regulations satisfy the relevant specific obligation under the CAA, in this case the new obligation stemming from the promulgation of the revised 2008 ozone NAAQS. Finally, draft submittals are not considered plan submittals under the CAA because they have not been adopted by the state. Consequently, Utah's SIP submittal does not qualify for a finding of completeness. Because the requirements for public notice and opportunity for a hearing apply to Utah's December 12, 2012, submittal, the EPA's determination in this action that the submittal did not satisfy those requirements is also a determination that the December 12, 2012, submittal is incomplete in its entirety under the criteria in 40 CFR part 51, Appendix V, specifically the criteria in subsections 2.1(f) and (g). As Utah's submittal did not meet the minimum criteria in Appendix V, we are treating the state as not having made the required infrastructure SIP submission. *See* CAA section 110(k)(1)(C).

Wyoming did not submit a SIP to address the requirements of section 110(a)(2)(A), (B), (C) to the extent it refers to enforcement, to permitting programs for minor sources and to PSD permitting programs required by part C of title I of the CAA, (D)(i)(II), (D)(ii), (E)-(H) and (J)-(M). The state anticipates undergoing rulemaking and public notice early in 2013.

⁶ *See* Attachment B, "Regional Consistency for the Administrative Requirements of State Implementation Plan Submittals and the Use of 'Letter Notices'", Memorandum from Janet McCabe, Deputy Assistant Administrator for the Office of Air & Radiation, to EPA Regional Administrators, April 6, 2011.

Region IX

Arizona did not submit a complete SIP to address the requirements of section 110(a)(2)(C) and (J) to the extent these refer to the Prevention of Significant Deterioration (PSD) permitting programs required by part C, title I of the CAA for sources in Maricopa County, Pima County, and Pinal County. Arizona did not submit a complete SIP to address the PSD-related requirements of section 110(a)(2)(D)(i)(II) to the extent it refers to interference with other states' PSD permitting programs required by part C by sources in these counties. Arizona did not submit a complete SIP to address the requirement of section 110(a)(2)(D)(ii) to the extent it refers to notification to other states for sources in these counties. Finally, did not submit a complete SIP to address the requirement of section 110(a)(2)(K) for the same counties. In Pinal County, PSD sources are subject to a SIP-approved PSD program but the state has not yet submitted SIP revisions to address PSD requirements for the 2008 8-hour ozone NAAQS. In Maricopa and Pima counties, sections 110(a)(2)(C), (D)(i)(II), (D)(ii), (J) and (K) (in all five subsections for the PSD-related and notification-related requirements only) are currently addressed by an existing PSD FIP that remains in place. Therefore, this action will not trigger any additional FIP obligations with respect to these PSD-related and notification-related requirements in Maricopa and Pima counties.

California did not submit a SIP to address the requirements of section 110(a)(2)(A), (B), (C) to the extent it refers to enforcement, to permitting programs for minor sources and to PSD permitting programs required by part C of title I of the CAA, (D)(i)(II), (D)(ii), (E)-(H) and (J)-(M). Regarding this finding, sections 110(a)(2)(C), (D)(i)(II), (D)(ii) and (J) (in all four subsections for the PSD-related and notification-

related requirements only) are already addressed for some portions of California through an existing PSD FIP that remains in place. Therefore, this action will not trigger any additional FIP obligations with respect to the PSD-related and notification-related requirements in these four subsections in those portions of California.

Hawaii did not submit a SIP to address the requirements of section 110(a)(2)(A), (B), (C) to the extent it refers to enforcement, to permitting programs for minor sources and to PSD permitting programs required by part C of title I of the CAA, (D)(i)(II), (D)(ii), (E)-(H) and (J)-(M). Regarding this finding, sections 110(a)(2)(C), (D)(i)(II), (D)(ii) and (J) (in all four subsections for the PSD-related and notification-related requirements only) are already addressed for Hawaii through an existing PSD FIP that remains in place. Therefore, this action will not trigger any additional FIP obligations with respect to the PSD-related and notification-related requirements in these four subsections.

Nevada did not submit a complete SIP to address the requirements of section 110(a)(2)(A), (B), (C) to the extent it refers to enforcement, to permitting programs for minor sources and to PSD permitting programs required by part C of title I of the CAA, (D)(i)(II), (D)(ii), (E)-(H) and (J)-(M). On December 20, 2012, the state by letter submitted documents that summarize the state's existing infrastructure SIP elements. The state's letter offers its position that "[s]ince no revisions for the Nevada infrastructure SIP for the 1997 ozone NAAQS are required to meet the infrastructure SIP requirements of the 2008 ozone NAAQS", no public notice requirements should apply at this time for the revised ozone standard. The state's letter also requested that the EPA act on these submittals pursuant to the "parallel processing" procedures set forth in 40 CFR part 51,

Appendix V. The state has not yet completed a public comment process on this submission, but the state letter provided information on the schedule for public comment periods and public hearings for three geographic subdivisions of the state indicating that all steps in the public comment processes would be finished by the end of February 2013. The state letter maintains that the EPA can make a completeness finding on Nevada's submittal under section 2.3 of 40 CFR part 51, Appendix V. For the reasons explained below, the EPA disagrees with both rationales offered by the state and hereby finds that Nevada has failed to submit a complete SIP to address the infrastructure SIP requirements of CAA section 110(a)(2) for the 2008 8-hour ozone NAAQS. Nevada's first rationale that no public comment process is needed because no revisions for the Nevada infrastructure SIP for the 1997 ozone NAAQS are required to meet the infrastructure SIP requirements of the 2008 ozone NAAQS is inconsistent with the plain text of section 110(a)(1) of the CAA. Section 110(a)(1) first provides that "[e]ach State shall, *after reasonable notice and public hearings*, adopt and submit to the Administrator, within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a [primary NAAQS] (or any revision thereof) ... a plan [i.e., infrastructure SIP] which provides for implementation, maintenance, and enforcement of such primary standard." The clause "*after reasonable notice and public hearings*" is most naturally read as imposing that procedure on the immediately following phrase, "adopt and submit," the direct object of which is the infrastructure SIP itself. Nevada's position would instead apply the phrase "*after reasonable notice and public hearings*" to SIP revisions submitted before the promulgation of the new or revised primary NAAQS, despite the complete absence of a reference to those earlier SIP revisions in section

110(a)(1). Any possible residual ambiguity is removed by the last sentence of section 110(a)(1), which requires an infrastructure SIP for a secondary NAAQS to be considered (unless a separate public hearing is provided) “at the hearing required by the first sentence of this paragraph.” The only possible interpretation of this sentence is that there must be an opportunity for public hearing for the infrastructure SIPs for both the primary and secondary NAAQS. As explained in an EPA memorandum,⁷ the requirement in the CAA and EPA rules for public notice and opportunity for a hearing is to inform the public that the SIP is being revised and allow for comment as to whether the state regulations satisfy the relevant specific obligation under the CAA, in this case the new obligation stemming from the promulgation of the revised 2008 ozone NAAQS. Finally, draft submittals are not considered plan submittals under the CAA because they have not been adopted by the state. Consequently, Nevada’s SIP submittal does not qualify for a finding of completeness. Regarding Nevada’s second rationale based on the parallel processing provisions of section 2.3 of 40 CFR part 51, Appendix V, the EPA agrees that this section provides for EPA to propose an approval action for a draft SIP submittal accompanied by a request for parallel processing as a way to reduce the time elapsed before final approval can be given after completion of the public comment process. However, draft submittals are not considered plan submittals under the CAA because they have not been adopted by the state. Consequently, a draft SIP submittal accompanied by a request for parallel processing under 40 CFR part 51, Appendix V

⁷ See Attachment B, "Regional Consistency for the Administrative Requirements of State Implementation Plan Submittals and the Use of 'Letter Notices'", Memorandum from Janet McCabe, Deputy Assistant Administrator for the Office of Air & Radiation, to EPA Regional Administrators, April 6, 2011.

does not qualify for a finding of completeness.⁸ Because the requirements for public notice and opportunity for a hearing apply to Nevada's December 20, 2012, submittal, the EPA's determination in this action that the submittal did not satisfy those requirements is also a determination that the December 20, 2012, submittal is incomplete in its entirety under the criteria in Appendix V, Part 51 of Title 40 of the Code of Federal Regulations, specifically the criteria in subsections 2.1(f) and (g). As Nevada's submittal did not meet the minimum criteria in Appendix V, we are treating the state as not having made the required infrastructure SIP submission. *See* CAA section 110(k)(1)(C).

Region X

Washington did not submit a SIP to address the requirements of section 110(a)(2)(A), (B), (C) to the extent it refers to enforcement, to permitting programs for minor sources and to permitting programs required by part C of title I of the CAA, (D)(i)(II), (D)(ii), (E)-(H) and (J)-(M). Regarding this finding, sections 110(a)(2)(C), (D)(i)(II), (D)(ii) and (J) (in all four subsections for the PSD-related and notification-related requirements only) are already addressed for Washington through an existing PSD FIP that remains in place. Therefore, this action will not trigger any additional FIP obligations with respect to the PSD-related and notification-related requirements in these four subsections.

As noted earlier, the EPA is committed to working with these states and areas to expedite the needed submissions and to review and act on their infrastructure SIPs submission in accordance with the requirement of the CAA.

⁸ *See* Memorandum from John Calcagni, Air Quality Management Division, OAQPS, to EPA Air Division Directors, Regions I through X, "State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (Act) Deadlines," October 28, 1992.

IV. Statutory and Executive Order Reviews

A. Executive Orders 12866: Regulatory Planning and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a “significant regulatory action” under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under EO 12866 and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* This final rule does not establish any new information collection requirement apart from that already required by law. This rule relates to the requirement in the CAA for states to submit SIPs under section 110(a) to satisfy certain infrastructure and general authority-related elements required under section 110(a)(2) of the CAA for the 2008 8-hour ozone NAAQS. Section 110(a)(1) of the CAA requires that states submit SIPs that implement, maintain and enforce a new or revised NAAQS which satisfy the requirements of section 110(a)(2) within 3 years of promulgation of such standard, or such shorter period as the EPA may provide.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a federal agency. This includes the time needed to review instructions; develop, acquire, install and utilize technology and systems for the purposes of collecting, validating and verifying information, processing and maintaining information and disclosing and providing information; adjust the existing ways to comply with any previously applicable

instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in the CFR are listed in 40 CFR Part 9.

C. Regulatory Flexibility Act (RFA)

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the APA or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations and small governmental jurisdictions. For the purpose of assessing the impacts of this final rule on small entities, small entity is defined as: (1) a small business that is a small industry entity as defined in the U.S. Small Business Administration (SBA) size standards (*See* 13 CFR 121); (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this final rule on small entities, I certify that this rule will not have a significant economic impact on a substantial number of small entities. This final rule will not impose any requirements on small entities. This action relates to the requirement in the CAA for states to submit SIPs under section

110(a) to satisfy certain infrastructure and general authority-related elements required under section 110(a)(2) of the CAA for the 2008 ozone NAAQS. Section 110(a)(1) of the CAA requires that states submit SIPs that implement, maintain and enforce a new or revised NAAQS which satisfies the requirements of section 110(a)(2) within 3 years of promulgation of such standard, or such shorter period as EPA may provide.

D. Unfunded Mandates Reform Act of 1995 (UMRA)

This action contains no federal mandate under the provisions of Title II of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531–1538 for state, local and tribal governments and the private sector. The action imposes no enforceable duty on any state, local or tribal governments or the private sector. Therefore, this action is not subject to the requirements of section 202 and 205 of the UMRA.

This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This action relates to the requirement in the CAA for states to submit SIPs under section 110(a) to satisfy certain infrastructure and general authority-related elements required under section 110(a)(2) of the CAA for the 2008 ozone NAAQS. Section 110(a)(1) of the CAA requires that states submit SIPs that implement, maintain and enforce a new or revised NAAQS which satisfies the requirements of section 110(a)(2) within 3 years of promulgation of such standard, or such shorter period as the EPA may provide.

E. Executive Order 13132: Federalism

EO 13132, titled "Federalism" (64 FR 43255, August 10, 1999), requires the EPA to develop an accountable process to ensure "meaningful and timely input by state and

local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the EO to include regulations that have "substantial direct effects on the states, or the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government." This final rule does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in EO 13132. The CAA establishes the scheme whereby states take the lead in developing plans to meet the NAAQS. This rule will not modify the relationship of the states and the EPA for purposes of developing programs to implement the NAAQS. Thus, EO 13132 does not apply to this rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

EO 13175, titled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires the EPA to develop an accountable process to ensure "meaningful and timely input by Tribal officials in the development of regulatory policies that have Tribal implications." This final rule does not have tribal implications, as specified in EO 13175. This rule responds to the requirement in the CAA for states to submit SIPs under section 110(a) to satisfy certain elements required under section 110(a)(2) of the CAA for the 2008 8-hour ozone NAAQS. Section 110(a)(1) of the CAA requires that states submit SIPs that provide for implementation, maintenance and enforcement of a new or revised NAAQS, and which satisfy the

applicable requirements of section 110(a)(2), within 3 years of promulgation-of such standard, or within such shorter period as the EPA may provide. No tribe is subject to the requirement to submit an implementation plan under section 110(a) within 3 years of promulgation of a new or revised NAAQS and the court order requiring this final action does not affect any tribe or its implementation plan.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

The EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5-501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because it is making findings that certain states have failed to submit a complete SIP that provides certain basic program elements of section 110(a)(2) necessary to implement the 2008 8-hour ozone NAAQS.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not a "significant energy action" as defined in EO 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer Advancement Act of 1995 (NTTAA), Public Law No. 104-113, section 12(d) (15 U.S.C. 272 note) directs the EPA to use voluntary consensus standards (VCS) in its regulatory activities unless to do so

would be inconsistent with applicable law or otherwise impracticable. VCS are technical standards (e.g., materials specifications, test methods, sampling procedures and business practices) that are developed or adopted by VCS bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable VCS. This action does not involve technical standards.

Therefore, EPA did not consider the use of any VCS.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

EO 12898 (59 FR 7629, February 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies and activities on minority populations and low-income populations in the United States. The EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not directly affect the level of protection provided to human health or the environment. This notice is making a finding that certain states have failed to submit a complete SIP that provides certain of the basic program elements of section 110(a)(2) necessary to implement the 2008 8-hour ozone NAAQS.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a

rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in the *Federal Register*. A Major rule cannot take effect until 60 days after it is published in the *Federal Register*. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective **[INSERT DATE 30 DAYS AFTER THE DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

L. Judicial Review

Section 307(b)(1) of the CAA indicates which Federal Courts of Appeal have venue for petitions of review of final agency actions by the EPA under the CAA. This section provides, in part, that petitions for review must be filed in the Court of Appeals for the District of Columbia Circuit (i) when the agency action consists of "nationally applicable regulations promulgated, or final actions taken, by the Administrator," or (ii) when such action is locally or regionally applicable, if "such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination."

This final rule consisting of findings of failure to submit certain required infrastructure SIP provisions is "nationally applicable" within the meaning of section 307(b)(1). First, this rule affects many states, the District of Columbia and the Commonwealth of Puerto Rico. Second, the action affects states across the U.S. that are located in nine of the 10 EPA Regions, 10 different federal circuits and multiple time

zones. Third, the rule addresses a common core of knowledge and analysis involved in formulating the decision and a common interpretation of the requirements of 40 CFR 51 appendix V applied to determining the completeness of SIPs in states across the country.

This determination is appropriate because in the 1977 CAA Amendments that revised CAA section 307(b)(1), Congress noted that the Administrator's determination that an action is of "nationwide scope or effect" would be appropriate for any action that has "scope or effect beyond a single judicial circuit." H.R. Rep. No. 95-294 at 323 - 324, reprinted in 1977 U.S.C.C.A.N. 1402-03. Here, the scope and effect of this action extends to numerous judicial circuits because the action affects states throughout the country. In these circumstances, section 307(b)(1) and its legislative history authorize the Administrator to find the rule to be of "nationwide scope or effect" and thus to indicate that venue for challenges to be in the D.C Circuit. Accordingly, the EPA is determining that this is a rule of nationwide scope or effect. In addition, pursuant to CAA section 307(d)(1)(V), the EPA is determining that this rulemaking action will be subject to the requirements of section 307(d). Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the District of Columbia Circuit Court within 60 days from the date final action is published in the *Federal Register*. Filing a petition for review by the Administrator of this final action does not affect the finality of the action for the purposes of judicial review nor does it extend the time within which a petition for judicial review must be filed, and shall not postpone the effectiveness of such rule or action. Thus, any petitions for review of this action must be filed in the Court of Appeals for the District of Columbia Circuit within 60 days from the date final action is published in the *Federal Register*.

List of Subjects in 40 CFR Part 52

Approval and promulgation of implementation plans, Environmental protection,
Administrative practice and procedures, Air pollution control, Incorporation by reference,
Intergovernmental relations and Reporting and recordkeeping requirements.

Dated: January 4, 2013.

Gina McCarthy, Assistant Administrator,
Office of Air and Radiation.

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